In the High Court of Judicature at Madras

Dated: 21/08/2003

C O R A M

The Honourable Mr. Justice P. SHANMUGAM
and
The Honourable Mr. Justice A. KULASEKARAN

H.C.P.No. 2295 of 2002 and H.C.P.No. 2296 of 2002

Paramchand Sha .. Petitioner in
H.C.P. 2295/2002

South Varsha .. Petitioner in
H.C.P. 2296/2002

-Vs-

1. The State of Tamil Nadu, rep. by
its Secretary to Government,
Prohibition & Excise Department,
Fort St. George,
Chennai-9.

2. The State, rep. by
Commissioner of Police,
Greater Chennai,
Egmore, Chennai.

3. The State, rep. by
Inspector of Police,
K-1 Sembium Police Station,
Chennai. .. Respondents

PRAYER : Petitions under Article 226 of the Constitution of India seeking to issue Writs of Habeas Corpus calling for the records in relation to the detention orders passed in B.D.G.F.I.S. Nos.883 and 884 of 2002 respectively dated 31.8.2002, set aside the same and consequently direct the respondents to produce the detenus Thiru. Rakesh Kumar, S/o. Sarjith Prasad and Thiru. Bavan Kumar, S/o. South Varsha now confined in the Central Prison, Chennai, before this Hon'ble Court and set them at liberty forthwith.

!For Petitioners : Mr. Peter Ramesh Kumar for
Mr. R.C. Paul Kanagaraj.

^For Respondents : Mr. A. Navaneethakrishnan,

Additional Public Prosecutor.

:O R D E R
DELIVERED BY

P. SHANMUGAM, J.

The father-in-law of the detenu is the petitioner in H.C.P. No.2295 of 2002. He challenges the order of detention passed by the Commissioner of Police, the second respondent herein, against the detenu, Rakesh Kumar dated 31.8.2002.

2. The brief facts necessary for the disposal of these Habeas Corpus Petitions are as follows :
The detenu in H.C.P. No.2295 of 2002 is an ordinary resident of Bihar. He had come over to Chennai along with another person by name Bavan Kumar (detenu in H.C.P. No.2296 of 2002). It is mentioned in the grounds of detention that the detenu was involved in five adverse cases said to have occurred on 15.6.2002, 17.6.2002, 20.6.2002, 22.6.20 02 and 27.6.2002 under Section 420 of the Indian Penal Code. While those cases were under investigation, a case was registered against the detenu in Crime No.713 of 2002 at the instance of one Smti. Santhiya for the offences said to have committed under Sections 420, 336, 39 7 and 506(2) I.P.C. As per this case, which is the ground case, on 1 0.7.2002, while Santhiya, the complainant, was sitting alone in her house, the detenu, along with Bavan Kumar, came to her house and informed her that they will polish the gold and silver jewels. Believing their words, the complainant removed the gold jewels and asked them to polish the same. The detenu and Bavan Kumar put the gold jewels in an eversilver cup and put some powder from the plastic bag kept by them and later poured water in the said cup. The water in the said eversilver cup turned yellowish. Thereafter, they asked the complainant to heat the eversilver cup and when she went inside the house, she found the gold jewels missing from the eversilver cup. Immediately thereafter, the complainant raised an alarm and shouted for help, as a result of which the detenu and Bavan Kumar ran towards the road trying to flee away. The public who gathered, tried to apprehend the detenu and Bavan Kumar, but however, they took out a knife and threatened the complainant and the public that if anybody came near them, they would be murdered. The police, who came there on rounds, noticing the events, rushed to apprehend the detenu and Bavan Kumar. However, the detenu and Bavan Kumar tried to block the advancing police by pelting stones at them and the stones lay scattered all over the road. Noticing these atrocious activities, the public, out of fear of danger to their lives and properties, ran for safer places and the traffic in that area was diverted. The normalcy in the area was also dislocated and there was a panic situation. Ultimately, the police personnel were able to surround the detenu and Bavan Kumar and apprehend them and later retrieved the knife from them. They were taken to the police station and a complaint was obtained from Smti. Santhiya and registered in Crime No.713 of 2002. The Inspector of Police visited the spot and prepared an observation mahazar. He also examined the witnesses and recorded their statements. The detenu and Bavan Kumar were also examined and their statements recorded. These and other relevant materials were placed before

the detaining authority, who came to the subjective satisfaction that the detenu and Bavan Kumar were habitually committing crimes and acting in a manner prejudicial to the maintenance of public order and that therefore it was necessary to pass an order of detention against them under Tamil Nadu Act 14 of 1982, ultimately passed the impugned order of detention. The said order is now under challenge.

3. Learned counsel for the petitioner made detailed submissions, the summary of which is as follows :- i) i) There is a delay in disposal of the representation dated 23.9.2002 submitted on behalf of the detenu.
ii) The ground case does not involve a situation affecting public order, thereby attracting the provisions of Section 2 of Act 14 of 1982 and it is purely a law and order problem.
iii) There is non-application of mind on the part of the detaining authority inasmuch as the ground case is registered at Peravallur Police Station, whereas it is wrongly stated in the grounds of detention as having been registered at Sembium Police Station, though the crime number is stated correctly.
iv) The representation dated 23.9.2002 submitted on behalf of the detenu was not placed before the Advisory Board within a period of three weeks as required under the Act and the result of the same was also not communicated to the detenu within the time prescribed.
v) There is an erroneous reference to Crime No.649 of 2002 in the Hindi version of the detention order, though it is correctly stated as Crime No.664 of 2002 in the English version.
He therefore prays for setting aside the impugned order of detention.

4. Learned Additional Public Prosecutor, on the other hand, submitted that the representation submitted on behalf of the detenu dated 23.9.2002 has been disposed of as expeditiously as possible, especially when the representation was made in Hindi and it had to be translated and thereafter, the order of rejection had to be translated and even for that process, minimum time was taken for disposal of the representation. He submitted that the second respondent has also filed a detailed counter affidavit setting out the various dates of consideration of the representation and hence, there is no delay. According to him, the offences committed by the detenu were not directed against individual victims, but they were directed against the society at large and the property of the general public and hence, the activities of the detenu are a potential threat to the society. He submitted that the explanation to Section 2(1) of the Act clearly encompasses the activities of the detenu and therefore, the crime committed by the detenu can clearly be categorized as one coming within the definition of 'Goonda'. According to him, the mistakes, if any, in the wrong mentioning of the crime number and the name of the Inspector who was in charge of the police station at that time are very minor and trivial and the corresponding reports clearly show that nothing turns out from those minor discrepancies. Lastly, he submitted that that the representation dated 23.9.2002 was placed before the Advisory Board within the prescribed period of three weeks and the Advisory Board has also disposed of the representation on 3.10.2002 and communicated the disposal of the representation to the petitioner on 4.10.2002 and

therefore, there is no violation of any of the provisions of the Act. He therefore prays for dismissal of the H.C.P.

5. We have heard the counsel for the petitioner and the learned Additional Public Prosecutor and considered the matter carefully.

6. Insofar as the first point raised, viz. that there is a delay in disposal of the representation submitted on behalf of the petitioner, a counter affidavit has been filed by the second respondent herein. From the counter and the records, it hat the representation dated 23.9.2002, written in Hindi, was received by the Government on 24.9.2002. The remarks in reference to the said representation were called for from the detaining authority on 27.9.2002 and the said remarks were received from the sponsoring authority on 7.10.2002. The remarks were sent to the Government on 10.10.2002 and after the file having been circulated to the Translation Department in the Secretariat, the Deputy Secretary to the Government and ultimately the Honourable Minister, the representation was rejected on 6.11.2002 and the rejection order was served on the detenu on 8.11.2002. The various dates on which the representation was under consideration as set out in paragraph 6 of the counter affidavit are extracted below :-

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The representation in Hindi dated 23.9.2002 was received by the Government on 24.9.2002

Remarks called for from the Detaining Authority on 27.9.2002

The representation of the petitioner dated 23.9.2002 in Hindi was received by the Detaining Authority on 28.9.2002

Remarks & Translation of the representation into English and Tamil was called for from the Sponsoring Authority on 29.9.2002

28.9.2002 is a Government Holiday being Saturday
29.9.2002 is a Government Holiday being Sunday
2.10.2002 is a Government Holiday being Gandhi Jayanthi
5.10.2002 is a Government Holiday being Saturday
6.10.2002 is a Government Holiday being Sunday

Translation and the remarks received from the sponsoring authority on 7.10.2002

Remarks sent to Government on 8.10.2002

Remarks received by the Government on 10.10.2002

Translated Copy of the Hindi
representation called for 11.10.2002
from the Detaining Authority vide
Lr.No.41887/X/2002 Dt.11.10.2002

12.10.2002 is a Government Holiday being Saturday
13.10.2002 is a Government Holiday being Sunday
14.10.2002 is a Government Holiday being Ayuthapooja
15.10.2002 is a Government Holiday being Vijayadhasami

The above Govt. Lr. 41887/X/2002
Dt.11.10.2002 despatched on 16.10.2002

The Govt. Letter called for translated
copy of the representation received by
the Detaining Authority on 17.10.2002

The Detaining Authority forwarded
the English and Tamil translation
to the Government on 18.10.2002

19.10.2002 is a Government Holiday being Saturday
20.10.2002 is a Government Holiday being Sunday

Translated copy of the representation in
English and Tamil received by the Government on 21.10.2002

The file was circulated on 22.10.2002

The file was sent to Translation Dept.
of the Secretariat to translate the
draft rejection order in Hindi 23.10.2002

26.10.2002 is a Government Holiday being Saturday
27.10.2002 is a Government Holiday being Sunday

The file with Draft Hindi rejection order
was received on 29.10.2002

The Deputy Secretary perused the file on 29.10.2002

Hon'ble Minister for Prohibition & Excise
perused the file and rejected the
representation on
1.11.2002

2.11.2002 is a Government Holiday being Saturday
3.11.2002 is a Government Holiday being Sunday

Order of Rejection passed on 6.11.2002

Rejection order translated and served
to the detenu on
8.11.2002

As rightly pointed out by the learned Additional Public Prosecutor, the detaining authority had to get the representation, sent in Hindi, translated from the sponsoring authority and after the order was passed by the Government, a translated draft rejection order in Hindi was obtained and ultimately, the order was passed. Besides, the time taken for getting the representation translated and the orders of rejection of the Government translated as also the various dates which were Government Holidays are also set out above. By going through the various dates, we find that the representation sent on behalf of the detenu was constantly under consideration and we do not find any unexplained delay on the part of the Government in disposing of the representation. Hence, we do not find any substance in the said submission.

7. On the ground of non-applicability of the provisions of the Act, the submission of the learned counsel for the petitioner is that the Act is not attracted for the offence said to have been committed by the detenu. According to him, in any event, the offence said to have been committed by the detenu was within the four walls of a house and no public security or the life of general public was endangered by the activities of the detenu. Learned counsel further states that it is not a case affecting public order and therefore, invoking Section 2 of the Act is illegal. From the statements of the complainant and the records, it is seen that the detenu, along with another person, used to approach lone women in houses, initially convince them that they would polish silver items and after having satisfied the women that the polish had been done on the silver items, slowly they would request the women to part with their gold jewellery so that they would also be polished and by the time the women go to the kitchen to heat the eversilver cup as per the directions given by the detenu in order to see whether the items are polished, they would utilise the opportunity to make good their escape by secreting the jewels given to them. However, in the ground case, the complainant was quick enough to raise an alarm and the public gathered there and were able to apprehend the detenu with the help of the police. From the events narrated, it is clear that the crime committed by the detenu is repeated in a similar manner and that they have cheated innocent victim women, deprived them of their property, viz. the gold jewels.

8. Section 2 of the Tamil Nadu Act 14 of 1982 defines a 'Goonda' as a person who is engaged in making preparations for indulging in any activity which adversely affects the maintenance of public order. The explanation to this Section says that public order shall be deemed to have been affected adversely if any of the activities of any of the persons directly or indirectly are calculated to cause any harm or alarm or a feeling of insecurity among the general public or any section thereof. As per this explanation, any harm or alarm or a feeling of insecurity among the general

public or any section thereof is sufficient to attract the provisions as to the maintenance of public order. Applying this provisions and reading it along with the explanation and the facts of the case, it would be clear that the detenu had been attacking innocent victim women in the guise of polishing silver, and later on, gold jewels and taking advantage of their position in their houses, removing the gold jewellery given to them by deceitful methods. As argued by the learned Additional Public Prosecutor, the conduct of the detenu is calculated to cause harm or alarm, or in any account, a feeling of insecurity in the minds of a section of the general public in that area and therefore, it cannot be termed as an ordinary offence committed against the property of a person within the four walls of a house. Inasmuch as the detenu comes from Bihar and he could talk only a few sentences in Tamil and English combined, he was able to take away the jewels of the women by performing the repeated acts of cheating in the manner set out in the grounds as against all his victims.

9. It is further seen that the detenu was staying along with the other person Bavan Kumar in a lodge and the recovery mahazar in all the five cases registered against him would show that the detenu was found in possession of stolen articles and atleast in two of those cases, they were the very same articles which were stolen from the victims. Therefore, he cannot be said to have committed an ordinary criminal offence nor it could be stated that the act of the detenu would not create an alarm or a feeling of insecurity among the minds of a section of the general public, viz. Womenfolk.

10. The learned counsel for the petitioner referred to the judgments of the Supreme Court in Smt. Angoori Devi for Ram Ratan vs. Union of India & Others [1989 S.C.C. (Cri.) 164], Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police & Others [1995 S.C.C. (Cri.) 454] and Smt. Tarannum vs. Union of India & Others [1998 S.C.C. (Cri.) 1037] and contended that the case on hand would not be termed as one affecting public order. In all these cases, the respective preventive detention Acts did not deal with the explanation to the definition of public order as set out under Tamil Nadu Act 14 of 1982. Insofar as the explanation is concerned, it is a very wide definition and even a feeling of insecurity among a section of the public is brought under the definition of public order.

11. In the first of the above cited cases, viz. Smt. Angoori Devi's case, their lordships found that the case that was involved therein was an isolated criminal case with no sinister significance attached to it. It was held that the subjective satisfaction of the detaining authority with respect to the persons sought to be detained should be based only on the nature of the activities disclosed in the grounds of detention. The grounds of detention must have a nexus for the purpose of which the detention was sought to be made. In the next case, viz. Mustakmiya's case, the Supreme Court has held that disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. Their lordships have referred to the judgment of the Supreme Court in Piyush Kantilal Mehta vs. Commissioner of Police [1989 Supp. (I) S.C.C. 322]

wherein it was held that in order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. From the narration of the facts in that case, their lordships held that at the most, it was a criminal act directed only against an individual which has nothing to do with the question of public order. In the third case, viz. Smt. Tarannum's case, the Supreme Court has found that no incident was mentioned in the grounds of detention which has no relation with the main incident that took place. It was held that the acts mentioned in the ground case to the main incident pertained to law and order problem and not the maintenance of public order. It was held by the Supreme Court that the authorities were not right in passing the impugned order of detention for a law and order problem, treating the same as as one affecting public order.

12. Applying the above principles to the case on hand, we find that the detenu, along with Bavan Kumar, was acting in a planned and concerted manner, attacking the property and person of victim womenfolk by stating that they would polish their gold and silver jewellery and later on fleeing away with the said jewellery. It has come to light that all the offences in reference to which complaints pending investigation at that time were the handiwork of the detenu. The detenu himself has given a voluntary statement before the investigating officer and this statement, coupled with the statements of the complainants in the respective complaints lodged by them in seriatim from 15.6.200 2 onwards, the recoveries made and the manner of commission of the offences reveal that the detenu, by his acts, has created insecurity in the minds of a section of the general public, viz. innocent women at their homes. It is seen that the detenu was also identified by the complainants in the adverse cases. It is further clear that normal criminal laws will not have the desired effect of preventing the recurrence of such criminal activities of the detenu and therefore, the impugned order of detention was passed. The stand of the learned Additional Public Prosecutor that the detenu has shown his propensity to commit such offences against women and that the action of the detenu has got the potentiality and reach to the society at large has to be accepted. Therefore, we do not find any substance in the said submission.

13. The other submission of the learned counsel for the petitioner is that the petitioner could not make an effective representation because he was not furnished with the correct crime number in reference to the second adverse case. According to him, in the Hindi version of the grounds of detention, in reference to the second adverse case, the Crime Number is shown as 649 of 2002 and it is a mistake to have shown a wrong crime number when the correct Crime Number is 664 of 20 02 which is found in the English version of the grounds of detention as well as in the First Information Report found at page 9 of the Hindi version of the grounds of detention. It cannot be stated that the petitioner was deprived of an opportunity to make an effective representation simply because of the wrong mentioning of the crime number in the Hindi version of the grounds of detention.

14. It is also seen that in the grounds of detention, it is stated that the Inspector of Police, Crimes, K-1 Sembium Police Station registered a

case in K-1 Sembium Police Station. However, factually, Thiru G. Ramachandran, Inspector of Police, Sembium Police Station was also in charge of the Peravallur Police Station during the relevant time. Therefore, we do not find any non-application of mind on the part of the detaining authority on that score.

15. It is submitted that as against the order of detention dated 31.8.2002, the petitioner had made a representation on 23.9.2002. However, the papers were placed before the Advisory Board, as required under Section 10 of the Act, within three weeks from 31.8.2002. The papers were placed before the Board on 12.9.2002 within three weeks from the date of order of detention. The representation sent by the petitioner dated 23.9.2002 was sent to the Advisory Board with an additional letter sent to the Board. The Board, after considering the representation, passed an order on 3.10.2002, which was served on the detenu on 4.10.2002. Thus, we do not find any violation of Sections 10 or 11 of the Act.

16. The judgment reported in Darpan Kumar Sharma vs. State of Tamil Nadu [J.T. 2003 (1) S.C. 176] is a case where the detenu was involved in three incidents under Section 379 I.P.C. and a single instance of robbery. The Supreme Court, in that case, held that there was no material on record to show that the reach and potentiality of a single incident of robbery was so grave as to create a feeling of insecurity in the minds of the public. As held by the Supreme Court, the other offences are under Section 379 I.P.C. and only one offence related to robbery was said to have been committed by the detenu and the Supreme Court, therefore, found that it is not sufficient to hold that there is breach of public order. In our case, the detenu is involved in five cases of similar nature committed under Section 420 I.P.C. and from the method and manner of commission of the offences against the weaker sections of public, viz. womenfolk, we are of the opinion that the detenu has got the potentiality and propensity to continuously commit the offences of similar nature and that it will affect the general public at large. We hold that taking into account the nature and the activities of the detenu, but for the detention, he would indulge in prejudicial activities of similar nature affecting the general public.

17. In Ayya vs. State of U.P. [1989 (1) S.C.C. 374], their lordships of the Supreme Court have held that there are well recognised objectives and judicial tests of the subjective satisfaction for preventive detention. Amongst other things, the materials considered by the detaining authority in reaching the satisfaction must be susceptible of the satisfaction both in law and in logic. The tests are the usual administrative law tests where power is couched in subjective language. It was held in that case that what might be otherwise simple ' law and order' situation might assume the gravity and mischief of ' public order' by reason alone of the manner or the circumstances in which or the place at which it is carried out. Considering the fact that the detenu in this case on hand had chosen unwary womenfolk at homes and the fact that the material objects, viz. gold jewellery was relieved off from them and the method employed by the detenu, all taken together would mean that it is not a simple case of mischief of law and order, but it is an otherwise simple law and order situation which assumed the

character of public order by reason alone of the manner and the circumstances in which and the place at which it had been carried out. Taking all these

things into account, we do not find any merit in the submission that the offence committed by the detenu is purely one affecting law and order and committed within the four walls of a house.

18. For the above reasons, no grounds are made out to set aside the impugned order of detention. The Habeas Corpus Petition fails and it is accordingly dismissed.

19. In H.C.P. No.2296 of 2002, the father of the detenu is the petitioner. He challenges the order of detention passed by the second respondent dated 31.8.2002. The facts and other circumstances concerning the detention of the detenu in this case are similar in every respect to H.C.P. No.2295 of 2002. The points raised and argued by the counsel are also identical. Therefore, we do not intend to deal with the points raised herein separately.

20. However, the only point that was argued separately is in reference to the failure on the part of the respondents to intimate as to the detention of the detenu to the family members. According to the learned counsel for the petitioner, the mandatory requirement of Section 8 of the Act has not been complied with.

21. The learned Additional Public Prosecutor furnished before us the copy of the intimation sent along with the receipt of the registered post and the proof of the intimation having been sent, duly signed by the Inspector concerned dated 3.9.2002 to the effect that the father of the detenu, Thiru. South Varsha, had been communicated with the detention order by registered post. In the light of this receipt of the father of the detenu and the statement of the Inspector, we do not find any reason to accept the contention that there was no intimation to the family members as to the detention of the detenu.

22. Hence, H.C.P. No.2296 of 2002 also fails and it is accordingly dismissed.

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To

1. The Secretary to Government,
Prohibition & Excise Department,
State of Tamil Nadu,
Fort St. George,
Chennai-9.

2. The Commissioner of Police,
Greater Chennai,

Egmore, Chennai-8.

3. The Inspector of Police,
K-1 Sembium Police Station,
Chennai.

4. The Superintendent,
Central Prison,
Chennai.

5. The Joint Secretary to Government,
State of Tamil Nadu,
Public (Law and Order),
Fort St. George,
Chennai-9.

6. The Public Prosecutor,
Chennai-600 104.